

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**RECEIVED****JAN 25 1994**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Implementation of Section 17 of the )  
Cable Television Consumer Protection )  
and Competition Act of 1992 )

ET Docket No. 93-7

Compatibility Between Cable Systems )  
and Consumer Electronics Equipment )

To: The Commission

**COMMENTS OF CABLEVISION SYSTEMS CORPORATION**

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## SUMMARY

Cablevision supports the Commission's efforts to increase the consumer's ability to utilize the advanced features and functions of their TVs and VCRs. As presently fashioned, however, the Commission's short-term proposals regarding supplementary equipment and the mandated provision of basic service "in the clear" threaten to compromise signal security, create further consumer confusion, and to reverse advances made to resolve interference, picture quality, channelization and signal leakage problems. The Commission should not give significant ground on several fronts in order to move forward incrementally on another.

Rather than the multiple and inconsistent interim requirements proposed in the Notice, it would be preferable to require only a reasonable consumer information and education program in the short-term. If the Commission nonetheless determines that some additional interim relief is necessary, it should permit cable operators to choose to provide customers with either multiple descramblers or bypass technology upon subscriber request, depending on which solution is technically appropriate in a particular system. To avoid creating new technical problems and unnecessary customer confusion, operators should not be required to provide both types of supplementary equipment or to offer signals carried on the basic service tier "in the clear."

In the short-term, the cable operator is in the best position to determine the most appropriate mix of technology for mitigating current compatibility problems. Forcing every operator into a technical straitjacket ignores the variations among cable systems. Uniformity is appropriate only after the long-term standards are in place. Regardless of whatever short-term measures are ultimately adopted, cable operators should have one year to come into compliance.

Cablevision agrees that operators have an important role to play in educating consumers about the means for addressing equipment incompatibility. That role must be tempered,

however, by practical considerations. It would be unduly burdensome, for instance, for the Commission to require cable operators to list all specific sources and models of remote controls and set-top devices. Rather, operators should be required to respond to consumer inquiries about the compatibility of a particular piece of equipment. If the FCC requires source-specific information, the compliance deadline should be one year from the date the rules are adopted.

Consistent with congressional intent, the Commission must also be sensitive to problems of signal theft. An operator should not be required to expose itself to signal piracy by advertising the availability of descramblers or addressable converters from third parties, who often sell devices engineered to receive services for which a subscriber has not paid. Unless and until such devices can no longer be used for theft of service, an operator's obligation should be limited to informing subscribers about the commercial availability of "plain vanilla" set-top devices used to deliver unscrambled signals.

In adopting regulations for new equipment, the Commission must avoid the creation of new incompatibilities by applying channelization and isolation requirements to the full frequency range up to 1 GHz. To avoid incompatibility after 1996, the Commission should reject "migration" plans under which some equipment will comply at frequencies up to 1 GHz while other equipment complies only up to 750 MHz.

Likewise, the proposed Decoder Interface must be broadly compatible. It should work with existing scrambling technologies, and should be capable of processing digital as well as analog signals. To enhance consumer use of advanced features, the Commission must also require manufacturers to provide a Decoder Interface for each tuner included in a TV receiver or VCR.

The Commission should also permit cable operators providing component descrambler/decoders and related equipment to subscribers to impose a separate charge for the equipment or its installation. There is no sound legal or policy reason for treating descrambler/decoders differently than other, similar equipment located in a subscriber's home. It is inappropriate to prevent cable operators from charging for such equipment as a "stick" to encourage unscrambling, particularly since encryption is likely to remain an effective means for preventing signal theft and for enabling cable operators to tailor their service offerings to individual customers.

Finally, such an approach will place all MVPDs on an equal footing while ensuring that consumers can utilize the features of their TVs and VCRs regardless of the distributor from whom they purchase service. Whatever compatibility obligations are imposed on cable operators should also be imposed on other multichannel video programming distributors ("MVPDs").

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To: The Commission

**COMMENTS OF CABLEVISION SYSTEMS CORPORATION**

Cablevision Systems Corporation ("Cablevision"), by its attorneys, hereby submits its comments in response to the Notice of Proposed Rulemaking ("Notice")<sup>1/</sup> in the above-captioned proceeding.

**INTRODUCTION**

Cablevision fully supports the goal of assuring compatibility between cable systems and consumer electronics equipment, but the short-term solutions proposed by the Commission will not advance that goal. To the contrary, these interim measures could have the unintended effect of compromising signal security, limiting consumer choice, and reintroducing the very same

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<sup>1/</sup> Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992, Compatibility Between Cable Systems and Consumer Electronics Equipment, FCC 93-495 (rel. Dec. 1, 1993).

picture quality, interference, channelization and signal leakage problems now resolved by cable operators through the use of set-top converters.

Rather than create these problems through the adoption of multiple and inconsistent interim technical requirements, it would be preferable to require only a reasonable consumer information and education program in the short-term. If the Commission nonetheless determines that some additional interim relief is necessary, it should require operators to provide either multiple descramblers or bypass switches upon subscriber request, depending on which technology is more appropriate for the particular system. Operators should not, however, be required to provide both types of supplementary equipment or to offer signals carried on the basic service tier "in the clear."<sup>2/</sup>

In the long-term, the Commission should guard against the creation of new incompatibilities between cable systems and consumer electronics by ensuring that all receive equipment manufactured or imported after December 31, 1996, is capable of tuning up to 1 GHz and that input selector switches meet Part 15 isolation rules at frequencies up to 1 GHz. Technical standards must also anticipate the increasing deployment and use of interactive capability and the introduction of digital technology.

Finally, consumers should be able to utilize the advanced features of their TV sets and VCRs regardless of the identity of the video programming distributor from whom they purchase service. To this end, whatever compatibility obligations are imposed on cable operators should also be imposed on all other multichannel video programming distributors ("MVPDs"). There

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<sup>2/</sup> Of course, operators who choose to offer both multiple descramblers and bypass should be permitted to do so, upon subscriber request.



is no logical or legitimate basis for distinguishing between cable operators and other MVPDs in this regard.

**I. CABLE OPERATORS SHOULD NOT BE REQUIRED TO PROVIDE BOTH MULTIPLE DESCRAMBLERS AND BYPASS SWITCHES OR TO OFFER THE BASIC TIER IN THE CLEAR**

The Commission proposes as an interim measure to require operators to offer both multiple descramblers and bypass switches, and to provide the basic service tier "in the clear." These multiple and inconsistent requirements are unlikely to enhance compatibility in the short term, however. Rather, they will undermine the goals of this proceeding by creating consumer confusion and contributing to signal leakage, picture quality and direct pick up and other interference problems. In the short-term, the cable operator is in the best position to determine the most appropriate mix of technology for mitigating current compatibility problems. Forcing every operator into a technical straitjacket ignores the variations among cable systems. Uniformity is appropriate only after the long-term standards are in place.

The Commission can most effectively address short-term compatibility problems by allowing cable operators to offer requesting customers either multiple descramblers or bypass switches to ensure their ability to access advanced features of their TVs and VCRs. Of course, operators who choose to offer both by-pass switches and multiple descramblers should be permitted to do so.

**A. MANDATING EVERY OPERATOR TO OFFER DESCRAMBLERS AND BY-PASS SWITCHES WILL CREATE TECHNICAL PROBLEMS AND CONSUMER CONFUSION**

As a short term solution to the current incompatibility between cable systems and consumer electronics equipment, cable operators should be required to provide supplementary equipment, with the choice of whether to provide converters with multiple descramblers or bypass upon subscriber request left to the operator, depending on the technical characteristics of the particular system.<sup>3/</sup> This solution would enable an operator to avoid adding set-top devices in systems where problems exist with the installed converter base<sup>4/</sup> or when the cable system is directly connected to existing consumer equipment. While many of these problems will be corrected in the long term,<sup>5/</sup> they would be exacerbated in many systems by the forced provision of descramblers.

In other systems, for instance, the use of by-pass technology will create direct pick-up ("DPU") interference<sup>6/</sup> and signal leakage, the latter of which can cause the cable system to

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<sup>3/</sup> See Notice at ¶ 12. Cablevision agrees that a separate charge should be permitted for the deployment of supplemental equipment such as multiple descramblers, consistent with the rate regulations applicable to other customer premises equipment. Id.

<sup>4/</sup> For instance, there may be systems in which a compatible multiple descrambler is unavailable or where the existing converter supplier is being phased out for failure to provide adequate support. In those cases, the cable operator should have the option of utilizing bypass switches rather than multiple descramblers.

<sup>5/</sup> Id. at ¶¶ 22-25.

<sup>6/</sup> In fact, studies have been conducted demonstrating that DPU creates substantial problems in the major urban markets in which Cablevision has a significant presence.

exceed the Commission's cumulative leakage index standards.<sup>7/</sup> As the Commission has acknowledged, cable operators often utilize converters precisely for the purpose of resolving the signal ingress and egress problems that occur when cable equipment and existing TV receivers or VCRs are connected directly to cable systems.<sup>8/</sup>

Until channelization standards are fully implemented, moreover, mandated by-pass could create additional problems. While some subscribers may be able to dispense with their converters, others with older TVs and VCRs will require them because their sets may be unable to tune certain channels provided on the basic level of service.<sup>9/</sup>

Apart from these technical concerns, use of a by-pass switch with existing equipment will not solve most compatibility problems and may create new sources of consumer confusion and dissatisfaction. Subscribers who purchase services requiring the use of a converter/descrambler will be forced to continually move back and forth from the converter to by-pass mode. More significantly, the by-pass switch standing alone will not enable a subscriber to use watch and record and picture-in-picture features unless both signals being processed are delivered in an unscrambled manner to the TV set or VCR. For instance, in order to watch and record two

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<sup>7/</sup> Notice at ¶ 22. See also Consumer Electronics and Cable System Compatibility, Report to Congress at 34-35 (1993) ("Compatibility Report"). By-pass may also create difficulties in troubleshooting signal leakage problems as customers move back and forth between the bypass mode and their converter.

<sup>8/</sup> Compatibility Report at 11-12, 34 n.52.

<sup>9/</sup> The Notice itself recognizes these problems and proposes to require cable operators to inform subscribers that if their TVs or VCRs are directly connected to the cable system, they may encounter problems, such as channelization incompatibilities, which can best be resolved through the use of set-top converters. Notice at ¶ 15. This issue alone could create a customer service nightmare, since one subscriber's home could have three generations of receive equipment, each requiring different solutions to resolve compatibility problems.

different programs where one or both of them are scrambled, the subscriber will need a multiple descrambler in addition to the by-pass switch.

Requiring every operator to offer by-pass switches could also conflict with the operator's must carry obligations.<sup>10/</sup> While the must carry rules require consistent carriage of stations on particular channels, the by-pass switch may make such channel placement impossible in many cases.<sup>11/</sup> For example, a non-upgraded 300 or 400 MHz cable system cannot carry UHF channels above 36 or 52 on-channel, respectively, without a converter.<sup>12/</sup> If the signals of stations assigned to these channels were delivered directly to a TV receiver, they could not be placed on-channel or received by older, less sophisticated TVs and VCRs.

Given the potential difficulties that multiple descramblers and by-pass switches could cause, depending upon the particular cable system, the Commission should grant operators the discretion to decide which technology most effectively will address current compatibility problems. This approach serves consumers -- who will obtain improved access to the advanced features of their TVs and VCRs -- while enabling each operator to adopt the solution that best reflects the technical characteristics of its system.<sup>13/</sup>

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<sup>10/</sup> 47 C.F.R. §§ 76.56, 76.57.

<sup>11/</sup> See supra n. 9.

<sup>12/</sup> See Exhibit A. If a UHF station on Channel 61 elected on-channel carriage, a converter would be required to meet that request.

<sup>13/</sup> The offering of supplementary equipment, particularly descramblers, should not be required until one year from the time the rules in this proceeding are finally adopted. This time period will allow for delays in equipment availability caused by increased demand coupled with decreases in production in anticipation of newly standardized equipment.

**B. UNSCRAMBLING COULD ENCOURAGE SIGNAL THEFT AND IS UNNECESSARY TO PROMOTE COMPATIBILITY**

Cablevision supports the unscrambled delivery of basic tier services where technically and economically feasible.<sup>14/</sup> Indeed, the company offers the basic service tier in the clear on all but a few of its systems. In certain systems, however, scrambling is justified for signal security and cost reasons<sup>15/</sup> and as a means of enhancing consumer choice. In New York City, for example, scrambling of the entire basic tier and the use of addressable converters permit Cablevision to protect against theft of service problems, to correct DPU and signal leakage problems, and to deauthorize service in recurrent non-payment situations without incurring the cost of a separate truck roll to each home to disconnect (and reconnect) service.<sup>16/</sup> In New York, forcing Cablevision to descramble its basic tier would require the company to incur substantial costs without significant countervailing benefits.

Mandatory unscrambling of the basic tier is also unnecessary to promote compatibility between cable systems and consumer electronics equipment in systems where operators provide multiple descramblers to subscribers upon request.<sup>17/</sup> At a minimum, the Commission should

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<sup>14/</sup> As the Commission indicates, the majority of cable systems now provide basic tier services in the clear. Notice at ¶ 13.

<sup>15/</sup> Congress specifically directed the Commission to take into account the need for effective protection against theft or unauthorized reception of cable service. 47 U.S.C. § 544a(c)(1).

<sup>16/</sup> Cablevision currently scrambles the basic tier in its Newark, New Jersey and New York City systems.

<sup>17/</sup> While the equipment compatibility regulations must include a requirement that an operator offer subscribers the option of receiving certain signals in the clear, that requirement is applicable only with respect to channels whose reception does not require a converter and only insofar as descrambling is "technically and economically feasible." 47  
(continued...)

allow operators that scramble the basic tier as of a date certain, e.g., January 1, 1994, to continue to do so.

**II. THE COMMISSION SHOULD ADOPT A CONSUMER NOTIFICATION POLICY THAT PROVIDES THE NECESSARY INFORMATION WITHOUT UNFAIRLY BURDENING CABLE OPERATORS**

Cablevision supports the implementation of a reasonable consumer notification and education program through which consumers would be informed of potential incompatibility problems and the availability of alternatives to operator-supplied equipment.<sup>18/</sup> Cablevision has already implemented notification procedures pursuant to which it informs its customers of the third-party availability of remote controls. Cable operators should be granted the discretion to choose the time and means to meet their consumer information requirements and to provide such information in a mailing with regular billings to subscribers.<sup>19/</sup>

**A. CABLE OPERATORS SHOULD NOT BE REQUIRED TO NAME ALL SPECIFIC MODELS OF COMPATIBLE EQUIPMENT OR ALL SOURCES FOR SUCH EQUIPMENT IN THE NOTICES THEY PROVIDE**

The consumer education and notification program should not require cable operators to list all specific models of commercially available equipment or specific vendors.<sup>20/</sup> Such a requirement would be both unreasonable and unduly burdensome. New devices are continually

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<sup>17/</sup>(...continued)

U.S.C. § 544a(c)(2). As set forth above, the use of a converter is often necessary to prevent signal leakage and to enable the carriage of television broadcast stations on the channels mandated by the must carry rules. In those circumstances, the statute cannot be said to mandate the unscrambling of basic services or any other service.

<sup>18/</sup> Notice at ¶¶ 15-16.

<sup>19/</sup> Notice at ¶ 15 n.15.

<sup>20/</sup> Id. at ¶ 16.

becoming available and may be sold at any number of stores.<sup>21/</sup> Consumer equipment vendors, moreover, are constantly entering and departing the retail market. The operator providing such information would doubtless be subject to complaints of favoritism from equipment vendors not included in the list, either because the retailer recently began carrying such products or because the retailer was inadvertently overlooked. At the same time, the operator would run the risk of angering its customers, who may rely on the list only to discover that since its publication the retailer has stopped carrying the product, that the product is unavailable locally, or that the product was discontinued.

Far more useful and practical than a source- and model-specific notification would be a requirement that a cable operator, in writing, (1) inform subscribers that there are alternatives to operator-supplied equipment; (2) indicate that such equipment generally may be purchased at department and other stores carrying consumer electronics equipment; and (3) provide customers a reliable means of contacting the company for information regarding the compatibility of particular products available on the open market.<sup>22/</sup> Such a scheme would serve the objective

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<sup>21/</sup> One of the newest universal remotes, the Casio Wrist Controller CMD-10B, works as a watch as well as a remote control. It is likely to be available at the vast array of stores that typically sell wristwatches as well as at electronics outlets.

<sup>22/</sup> Cablevision uses this mechanism to assist its subscribers in obtaining compatible remote control devices from third parties.

of promoting the availability of a wider selection of equipment without implicating the adverse consequences noted above.<sup>23/</sup>

**B. OPERATORS SHOULD NOT BE REQUIRED TO PROVIDE INFORMATION ON THE AVAILABILITY OF CONVERTERS WITH DESCRAMBLING CAPABILITIES**

The Commission's proposed notification rule would require cable operators to inform subscribers that some models of TV receivers and VCRs may not be able receive all of the channels offered by the cable system when connected directly to the cable system. The operator would also be required to explain channelization problems and to offer solutions, including the use of a set-top converter device "to be obtained from either the cable operator or by a third party retail vendor."<sup>24/</sup>

Cablevision does not object to providing subscribers with information about the availability of "basic" converters that are able to resolve channelization and ingress/egress problems but are without descrambling capabilities. A requirement that an operator inform subscribers about the third party availability of descramblers raises a serious threat to signal security, however. Operators should not be required to advise subscribers regarding the commercial availability of descrambling equipment, including addressable converters, from third-

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<sup>23/</sup> If the Commission requires the listing of specific vendors and models of compatible equipment, it must extend the proposed compliance date for notifications to at least one year from the date such a requirement is adopted. It would take at least that amount of time to compile an accurate list of all sources for compatible consumer electronics equipment, particularly in areas like New York City and its environs. Similarly, cable operators would need substantial lead to time to compile an accurate list of the growing number of models of compatible equipment. By at least one estimate, for instance, there are now approximately 700 models of remote control.

<sup>24/</sup> Notice at ¶ 15.



parties unless and until such equipment cannot readily be engineered to defeat encryption or other methods used by the operator to prevent piracy.

Establishing a market in the sale of descramblers, which a broad notification requirement would encourage, will inevitably increase the incidence of theft and should be delayed until improved signal security technology is available. The Commission has acknowledged the widespread availability of equipment capable of defeating signal security in the home dish market<sup>25/</sup> and in the cable industry,<sup>26/</sup> and cable operators have no means of ensuring that subscribers do not purchase similar devices for use in connection with cable systems. An operator should not be required to expose itself to the increased risk of signal piracy that a broad notice requirement would engender.

### **III. THE COMMISSION MUST MODIFY ITS PROPOSAL TO ENSURE THAT CABLE SYSTEMS AND NEW CONSUMER ELECTRONICS EQUIPMENT ARE COMPATIBLE**

Cablevision generally supports the proposal that consumer electronics equipment and cable systems be capable of operating at frequencies up to 1 GHz using the EIA/ANSI IS-6

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<sup>25/</sup> See In the Matter of Inquiry Into Encryption Technology for Satellite Cable Programming, 8 FCC Rcd. 2925, 2926 n.8. NCTA estimates that each illegal descrambler sold to a customer costs the cable industry approximately \$3,100 over the seven year useful life expectancy of the device. Comments of the National Cable Television Association, Inc., In re Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992, Compatibility Between Cable Systems and Consumer Electronics Equipment at 8 (Mar. 22, 1993).

<sup>26/</sup> Theft of service is estimated to result in over \$4.7 billion in unrealized revenue annually for the cable industry (without pay-per-view), or almost 24 percent of gross cable industry revenue in 1991. Compatibility Report at 13, citing "1992 Theft of Service Survey" conducted by the Office of Cable Signal Theft of the National Cable Television Association.

channel identification plan.<sup>27/</sup> With respect to this and the other proposed requirements for new equipment, however, the Commission must guard against the creation of new incompatibilities between cable systems and consumer electronics.

**Tuning Range for Consumer Equipment.** Permitting the manufacture of TV receivers and VCRs capable of tuning only up to 750 MHz<sup>28/</sup> while cable systems are engineered up to 1 GHz<sup>29/</sup> will inevitably require the renewed use of converters or other devices so that subscribers can receive the full range of channels delivered by cable operators. All receive equipment manufactured or imported after December 31, 1996, should be capable of tuning up to 1 GHz and, beginning after that date, input selector switches should meet Part 15 isolation rules at frequencies up to 1 GHz. If manufacturers cannot attain these capabilities by then, the compliance date should be moved forward so that the next generation of consumer electronics is fully compatible with advanced cable systems.

**Emission Standards.** Likewise, emission standards should reflect the widespread deployment of two-way cable systems. As proposed, new DPU and signal leakage requirements would apply only with respect to frequencies between 54 and 1002 MHz.<sup>30/</sup> To ensure the integrity and full functionality of interactive systems, these standards should also apply to all frequencies between 5 and 54 MHz. Operators currently utilize the frequency range 5 to 30 MHz for return paths. Protection for frequencies up to 54 MHz would allow operators to

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<sup>27/</sup> Notice at ¶ 19, et seq. See also id. at ¶ 24 (proposing to apply isolation requirements to frequencies up to 1 GHz).

<sup>28/</sup> Id. at ¶ 21.

<sup>29/</sup> Id. at ¶ 31.

<sup>30/</sup> Id. at ¶ 23.

expand two-way capability and introduce broadband return paths without facing the risk of interference from consumer devices.<sup>31/</sup>

**Decoder Interface.** Cablevision is also concerned that the introduction of a Decoder Interface and associated component descrambler unit, as recommended by the CAG and the Commission,<sup>32/</sup> will not adequately prevent incompatibility between cable systems and consumer electronics equipment with multiple tuners unless there is a separate Decoder Interface for each tuner.<sup>33/</sup> To enhance compatibility in the future, the Commission must require consumer electronics manufacturers to include one Decoder Interface for each tuner included in a TV receiver or VCR.

The Commission should also require that manufacturers ensure that the Decoder Interface connector be capable of accepting digital as well as analog signals.<sup>34/</sup> Moreover, the Decoder Interface should be "backwards compatible" so that existing scrambling technologies can continue to be used in connection with the delivery of signals to the new consumer equipment.

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<sup>31/</sup> The Commission may wish to consider notification measures TV and VCR manufacturers may take to inform purchasers that equipment manufactured to new standards will be coming out as of a date certain.

<sup>32/</sup> Id. at ¶ 19.

<sup>33/</sup> More specifically, the proposed solution will not permit consumers with dual tuner receivers to use picture-in-picture capabilities that utilize both tuners simultaneously.

<sup>34/</sup> Cf. Notice at ¶ 29 (proposing to require cable operators to provide equipment capable of processing scrambled and/or digital video service through the Decoder Interface connector).

#### **IV. CABLE OPERATORS SHOULD BE PERMITTED TO CHARGE SUBSCRIBERS FOR COMPONENT DESCRAMBLER/DECODERS AND ANY RELATED EQUIPMENT**

Cablevision strongly disagrees with the proposal to prohibit operators from imposing equipment and installation charges for descrambler/decoders and related equipment provided to subscribers.<sup>35/</sup> Contrary to the Commission's suggestion, such equipment is no more part of the "general cable network" than today's converters and descramblers, which perform much the same function as the proposed descrambler/decoder and for which the Commission either requires or proposes a separate charge.<sup>36/</sup> Unlike general cable plant, moreover, a descrambler/decoder presumably will be installed only on the premises of subscribers who have purchased a TV receiver or VCR with the interface and who require the equipment to receive service.

As a matter of policy, the Commission's rationale for preventing an operator from charging for the descrambler/decoder is unsound.<sup>37/</sup> The Commission speculates, without any factual justification, that forcing operators to provide this equipment without charge will either encourage consumers to purchase equipment with the Decoder Interface or will encourage

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<sup>35/</sup> Notice at ¶ 30.

<sup>36/</sup> See Report and Order and Further Notice of Proposed Rulemaking, Rate Regulation, MM Docket No. 92-266, 58 Fed. Reg. 29736, ¶¶ 283, 410 (rel. May 3, 1993) (converters); Notice at ¶ 12 (multiple descramblers).

<sup>37/</sup> Forcing an operator to provide a piece of equipment for which the operator cannot adequately recover its costs also raises concerns under the Fifth Amendment to the U.S. Constitution. U.S. Const. amend. V. Cf. Colorado Springs Prod. Credit Assoc. v. Farm Credit Admin., 967 F.2d 648, 654 (D.C. Cir. 1992) (government may not compel private party to surrender its funds without providing compensation unless the government's use of those funds confers a "significant, concrete, and disproportionate benefit on that party.").

operators to deliver signals in the clear. Either way, "compatibility will be enhanced."<sup>38/</sup> This unproven hypothesis overlooks the signal security concerns, signal leakage, channelization, and other technical considerations that have led most cable operators to scramble signals rather than delivering them in the clear and using interdiction devices to prevent the reception of unwanted services.

Cablevision utilizes interdiction where appropriate,<sup>39/</sup> but it is not appropriate in every circumstance. Interdiction is a complementary tool to ensure signal security; it is not a substitute for scrambling or the use of addressable technology,<sup>40/</sup> primarily because of the drawbacks inherent in interdiction, including its vulnerability to theft of service, DPU interference, costliness to install, channel capacity constraints and incompatibility with digital technologies.<sup>41/</sup> Traps are of similarly limited usefulness because of the interference and signal reception problems they can cause and their potential incompatibility with digitally transmitted signals.

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<sup>38/</sup> Notice at ¶ 30.

<sup>39/</sup> See, e.g., Implementation of Section 3 of the Cable Television and Consumer Protection Act of 1992, 8 FCC Rcd 2274, 2278 n.22 (1993).

<sup>40/</sup> For example, in a system in which five percent of subscribers purchase only the basic tier and the remainder of subscribers purchase other tiers or services in addition to basic, it is more cost-effective to deliver basic in the clear and use interdiction to prevent basic-only subscribers from receiving other services than it would be to scramble basic and provide every subscriber with a descrambler. Conversely, the variation among subscribers to upper tiers and a la carte services means that interdiction is far more expensive, inefficient and subject to technical limitations than addressable technology for delivering customized service packages.

<sup>41/</sup> Compatibility Report at 21.

Apart from these technical considerations, the use of encryption enables a cable operator to offer services on an a la carte basis. A cable operator "unbundles" services by encrypting every channel and descrambling those channels that the subscriber selects. Encryption is likely to remain an effective means for enhancing consumer choice. A policy that unfairly discourages the use of scrambling, which the Commission has proposed here, would thwart the Congress's expressed desire to encourage unbundled service offerings.<sup>42/</sup>

Given the limitations of currently available clear channel delivery systems, moreover, the proposal to deny cable operators the ability to recoup the costs of supplying descrambler/decoders is unlikely to encourage unscrambling. The more likely result of such a proposal will be to create an economic incentive for operators to continue to provide converters and descramblers for which they can charge, and to discourage them from developing the new equipment and security technologies for use with the Decoder Interface.<sup>43/</sup>

**V. ALL MULTICHANNEL VIDEO PROGRAM DISTRIBUTORS SHOULD BE SUBJECT TO THE SAME COMPATIBILITY REQUIREMENTS AS CABLE OPERATORS**

Whatever obligations are imposed on cable operators in this proceeding should also be imposed on other multichannel video programming distributors ("MVPDs"). In the absence of such an even-handed policy, subscribers who receive their programming from distributors other

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<sup>42/</sup> See S. Rep. No. 92, 102d Cong., 1st Sess. 76-77 (1991); H.R. Rep. No. 628, 102d Cong., 2d Sess. 89-90 (1992).

<sup>43/</sup> If the Commission should nevertheless insist that the cost for this equipment should be recovered in rates for cable service, it must provide some mechanism for cost recovery. For example, the costs associated with the equipment could be treated as an external cost or an add-on to an operator's service rate benchmark.

than cable operators have no assurance that they will be able to utilize the features and functionalities of their consumer electronics equipment. Imposing compatibility requirements solely upon cable, moreover, would place cable operators at an unfair disadvantage against competitors that could avoid the costs of complying with those requirements.

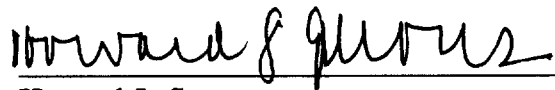
Like cable operators, all MVPDs should be required to channelize their delivery systems in a manner consistent with the amended EIA/IS-6, either throughout the network or by some device in the consumer's home, to provide a decoder/descrambler compatible with the Decoder Interface connector, to educate and notify consumers regarding compatibility problems; and to assume any other obligations imposed on cable operators with respect to these matters.

## CONCLUSION

Consistent with the statutory mandate to balance the goals of compatibility and signal security, the Commission should modify its proposed compatibility requirements as more fully described above.

Respectfully submitted,

CABLEVISION SYSTEMS CORPORATION



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## **EXHIBIT A**